

**MEMORANDUM OF AGREEMENT
BY AND AMONG
CITY OF MADISON BOARD OF EDUCATION,
THE CITY OF MADISON, ALABAMA
AND ENFINGER DEVELOPMENT, LLC**

This Memorandum of Agreement (“MOA”) will serve as an agreement by and among the CITY OF MADISON BOARD OF EDUCATION (hereinafter, “Board”), the CITY OF MADISON, ALABAMA (hereinafter the “City”), and ENFINGER DEVELOPMENT, LLC (hereinafter, “EDI”) (collectively, the “Parties”) relating to the City’s construction of a street extension to support the construction of, and facilitate access to, a new elementary school in Limestone County to be constructed by the Board and to fulfill obligations under a pre-existing Development Agreement for construction of a portion of the street to be further extended by the City.

1.0 INTRODUCTION

The Board has plans to construct an elementary school on property owned by the Board in Limestone County, Alabama, in Sections 11, 12, 13 and 14 of Township 4 South, Range 3 West (the “School Site”).

The School Site is located adjacent to a planned extension of Madison Branch Boulevard (formerly Halsey Drive) near Russell Branch and is adjacent to a residential development project (hereinafter, referred to as “Madison Branch Subdivision”) under construction pursuant to a Development Agreement by and between the City and Enfinger Development, Inc. (“EDI”) dated December 15, 2021, a copy of which is attached to this MOA as Exhibit A.

Under the Development Agreement, EDI has responsibility to construct an extension of Madison Branch Boulevard (referred to in the Development Agreement as a “Connector Road” to be known as “Halsey Drive”) from its then-current eastern terminus to the western boundary of the Madison Branch Development, which point is also coextensive with the western boundary of the School Site.

The referenced extension of Madison Branch Boulevard is to be constructed on an 80-foot wide right-of-way as depicted in Exhibit B, which generally depicts the proposed road specifications. The Development Agreement requires that EDI install trees every 50 feet and construct a 5-foot-wide sidewalk to be located on both sides of Madison Branch Boulevard.

In order to facilitate access to the School Site from the west, it is desirable that the extended Madison Branch Boulevard as described in the Development Agreement, be further extended westward to the eastern terminus of Maecille Drive at its intersection with Segers Road and that the existing Maecille Drive be widened and improved.

The Board and the City have reached an agreement regarding the referenced westward extension of Madison Branch Boulevard from the west boundary of the Madison Branch Development (and west boundary of the School Site) to the existing Maecille Drive and also the widening of Maecille Drive from the end of the Madison Branch Boulevard extension to Maecille Drive’s intersection

with Segers Road, and certain intersection improvements at the Maecille Drive and Segers Road intersection.

2.0 AUTHORITY

Each of the parties to this Agreement covenants that it has full authority to enter into this MOA. The undersigned covenant that they have authority to enter into this agreement on behalf of the Parties.

3.0 RESPONSIBILITIES OF THE PARTIES

3.1 City Responsibilities

A. City's Portion of the Madison Branch Boulevard Extension: The City will secure required right of way for, design, solicit bids, and award a contract for the construction of an additional extension of Madison Branch Boulevard from the western boundary of the Madison Branch Development (and of the School Site) to connect with the existing Maecille Drive and further to widen Maecille Drive to its terminus at Segers Road ("City Portion"), which is depicted in Exhibit C. The extension shall be generally consistent in design with the Madison Branch Boulevard extension. However, the designed and installed extension and widening by the City under this MOA shall contain a sidewalk on only one side of the road, and the divided landscaped median will not run for the full length of the extension to and widening of Maecille Road. The improvements shall be sufficiently wide to include a turn lane at the intersection of Maecille Drive and Segers Road, and the City will also construct and install acceleration and deceleration lanes on the east side of Maecille Drive to the north and south of the Maecille-Segers intersection, as depicted in Exhibit D. The Parties acknowledge that the name of Maecille Drive will remain the same, unless and until the City Council approves a change in the name of the road.

Rights-of-Way: The City will undertake in a timely fashion to provide all site examination and surveys necessary to provide legal descriptions necessary for the conveyance of an 80-foot wide right-of-way to the City for the City Portion, as well as such right-of-way as may be needed for widening Maecille Drive and installing the acceleration and deceleration lanes at the Maecille Drive and Segers Road intersection. The City will acquire said right-of-way in a manner so as to facilitate the timely completion of the City Portion as required herein. The Parties acknowledge that the timing and width of the right-of-way acquisitions may be subject to the approval and timing of the Limestone County Circuit and Probate Courts, but the City shall facilitate proceedings, settlements, and orders as expeditiously as possible.

B. Change Order Review: Design plans for the City's portion of the Madison Branch Boulevard Extension and Segers Road turn lane and intersection improvements have been prepared, are attached as Exhibit C and D, and are acceptable to the Board and EDI. Prior to approval of any change order making substantive changes to the designs depicted on Exhibit C and D, the City will submit a description of the proposed change

to the Superintendent of the Board and to EDI for review and will take into consideration requests for revision or modification of proposed design changes made by the Superintendent or EDI.

- C. Allowance of EDI Portion: Notwithstanding any limitations imposed on EDI regarding phasing of an addition to the Madison Branch Development, as set out in section 1.3(a) of the Development Agreement, the City agrees hereby to authorize EDI to undertake its required extension of Madison Branch Boulevard, to the western boundary of the Madison Branch Development (said point being further described as the western boundary of the School Site and the point at which the City's responsibility for further westward extension of Madison Branch Boulevard will commence under this MOA), and to complete that required extension no later than June 1, 2026, unless such time for completion is extended pursuant to the terms of this MOA.

3.2 EDI Responsibility

- A. Extension of Madison Branch Boulevard. Notwithstanding any other limitation on development of a second phase of the Madison Branch Development, as set out in Section 1.3(a) of the Development Agreement, EDI accepts responsibility for completion of the extension of Madison Branch Boulevard (referred to in the Development Agreement as Halsey Drive) to the western boundary off the Madison Branch Development as described in the Development Agreement and in a manner consistent with the requirements of Section 1.1(c) of said Agreement, to be complete no later than June 1, 2026. The deadline for completion shall be extended automatically to the extent that EDI is prevented from commencing or completing any portion of the required extension of Madison Branch Boulevard for any of the reasons stated in Section 3.4.
- B. Utility Infrastructure. Prior to May 1, 2025, EDI shall construct drainage tie-in structures as depicted in Exhibit C (Sheet 34) along with any associated stormwater management facilities.

3.3 Board Responsibilities

- A. Anticipated Opening: The Board's elementary school will be constructed with an anticipated opening date of August 2026.
- B. Payment for Cost of City's Portion: The Board will pay to the City a sum not-to-exceed Two Million One Hundred Forty Thousand Nine Hundred Eighty-Five Dollars (\$2,140,985) for the construction of the Madison Branch Boulevard Extension to be completed by the City hereunder. The Payments due from the Board shall be made on the following schedule:

1. The Board shall pay to the City Five Hundred Thousand and no/100 Dollars (\$500,000) on or before the date on which the City has acquired all property access rights necessary for the City's Madison Branch Boulevard Extension.
2. The Board shall pay an additional \$1,250,000.00 to the City upon receipt of notice that the City has awarded a contract for the completion of the City Portion with a substantial completion date of no later than June 1, 2026.
3. The Board shall pay to the City the sum of \$250,000 upon the Board's receipt of written notice that the City Portion is at least ninety (90%) percent complete, and completion of EDI's extension and the City's extension are both on schedule to occur no later than June 1, 2026.
4. The Board will pay the balance of \$140,985 to the City upon substantial completion of the City's Portion on or before June 1, 2026. If the City Portion is not completed on or before that date, or such extended date as may result from delays referenced in Section 3.4, the Board may reduce this final installment by the amount of liquidated damages that the City charges to the City Portion's contractor for late completion. The Parties acknowledge that liquidated damages in the construction contract will be charged at a daily rate for every day the project is late, and the City will disclose any completion delays and accruals of liquidated damages to the Board in a timely manner. The maximum of liquidated damages shall not exceed this final installment amount of \$140,985.

3.4 Timely Completion

The extension of the Madison Branch Boulevard Extension by EDI to the western boundary of the Madison Branch Development, and the City's Portion, shall be designed, awarded and completed not later than June 1, 2026. The deadline shall be extended automatically to the extent that the Parties are prevented from commencing or completing any portion of the Madison Branch Boulevard Extension Project specified in this MOA due to any of the following causes beyond their control: (1) acts of God, (2) flood, fire, or explosion, (3) war, invasion, riot or other civil unrest, (4) governmental order or law, (5) actions, embargoes, or blockades in effect on or after the date of this MOA, (6) action or inaction by any governmental authority on project approvals, (7) national or regional emergency, (8) strikes, labor stoppages or slowdowns, or other industrial disturbances, or (9) shortage of adequate power or transportation facilities.

4.0 MISCELLANEOUS

4.1 *Governing Law.*

This MOA shall be governed by and construed in accordance with the laws of the State of Alabama.

4.2 *Notices.*

Notices under this MOA shall be sent the following addresses:

City of Madison
c/o Mayor's Office
Madison Municipal Complex
100 Hughes Road
Madison, AL 35758

With a copy to:
Legal Department
Madison Municipal Complex
100 Hughes Road
Madison, AL 35758

City of Madison Board of Education
c/o Superintendent
211 Celtic Drive
Madison, AL 35758

With a copy to:
William W. Sanderson, Jr.
Bishop Colvin, LLC
2101 Clinton Avenue W. Suite 402
Huntsville, AL 35805

Enfinger Development, Inc.

4.3 *Successors in Interest*

The provisions of this MOA shall be binding upon and inure only to the benefit of the parties to the MOA and shall not be assigned to any other party without express written approval of the other parties.

4.4 *Compliance with Government Regulations*

Each party to this MOA agrees to comply with federal, state, and local laws, codes, regulations, and ordinances applicable to the work performed under this MOA.

4.5 *Severability*

If any provision of this MOA is declared by a court having jurisdiction to be illegal, unenforceable, or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; the rights and obligations of the parties shall be construed and enforced as if the MOA did not contain the particular provision held to be invalid.

4.6 *Amendments*

The terms and conditions of this MOA shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written approval of the parties hereto.

4.7 *Term and Termination*

This Agreement shall come into effect on the date that the authorized representatives of each party finally execute and affix their respective signatures in their duly authorized capacities. This MOA shall continue in effect until either (a) the completion by the City and EDI of the required extension of Madison Branch Boulevard, widening of existing Maecille Drive and intersection improvements at the intersection of Maecille Drive and Segers Road, and the Board's payment for the cost of the extension as specified in Section 3, or (b) if sooner, upon the termination of this MOA either by the unanimous written consent of the Parties or upon the occurrence a default under the terms of this MOA and its continuation beyond any applicable cure period upon written notice of the non-defaulting party. Upon any termination of this MOA in accordance with its terms, all obligations of the parties hereunder will terminate, except that any obligations arising prior to the date of such termination, including without limitation, any payment obligations of the Board shall survive such termination and shall be fulfilled by the party obligated hereunder.

4.8 *Dispute Resolution*

The parties shall endeavor to resolve any dispute arising out of or relating to this MOA by mediation under the Alabama Civil Mediation Rules. Unless the parties agree otherwise, the mediator will be selected from the Alabama Civil Mediators Roster.

Any controversy or claim arising out of or relating to this MOA or the breach, termination or validity thereof, which remains unresolved thirty (30) days after conclusion of a mediation conducted under applicable rules, shall be resolved by arbitration by a sole arbitrator in accordance with the applicable rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof.

4.9 *Further Assurances*

The Parties shall execute and deliver such additional documents, instruments, conveyances, and assurances, and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated in this MOA.

4.10 *Entire Agreement*

This MOA constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and it supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

4.11 *Waiver*

No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

4.12 *Time of the Essence*

Time shall be of the essence in this Agreement.

Dated this _____ day of _____ 2024.

CITY OF MADISON, ALABAMA
a municipal corporation

ATTEST:

By: _____
Paul Finley, Mayor

Lisa Thomas,
City Clerk Treasurer

CITY OF MADISON BOARD OF EDUCATION

By: _____
Tim Holtcamp, President

ATTEST:

Ed Nichols, Superintendent

ENFINGER DEVELOPMENT, LLC

By: _____
Oliver A. Orton, Manager